IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 8TH MARCH 2006 / 17TH PHALGUNA, 1927

CRP.No. 124 of 1995(F)

AGAINST THE ORDER IN E.P.181/83 IN
OS.95/1951 of PRINCIPAL SUB COURT, PALAKKAD

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REVISION PETITIONER/ PETITIONER (DECREE HOLDER/PLAINTIFF:

JANARDHANAN, S/O. THEYYANAKAN, AGED 63,
MOOCHIKKAL HOUSE, VALLIKKODE, PALAKKAD,
NOW RESIDING AT NEDUVAKKAD , KINASSERY AMSOM,
PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SHRI P. VELAYUDHAN.
BY ADV. SRI.T.M.CHANDRAN

RESPONDENTS/RESPONDENTS (JUDGMENT DEBTORS)/DEFENDANTS::

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1. C.V. NARAYANI, KALANKARAKALATHIL,
W/O. THEYANAKAN, THEKURUSSI AMSOM,
ALATHUR TALUK (DIED).

2. K.T. VIJAYAN, AGED 60 YEARS, S/O. THEYYANAKAN,
KULANGARAKALAM , THENKURISSI,
ALATHUR , PALAKKAD .

3. K.T. SUSEELA, AGED ABOUT 61 YEARS,
W/O, SACHIDANANDAN,
ANIKODUKALATHIL, THANISSERY AMSOM,
PALAKKAD.

4. K.T. RATNASIROMANI, AGED ABOUT 57, W/O. N. APPUKUTTAN,
ENARAYIL, MUTHALAMADA, CHITTUR TALUK,
PALAKKAD.

5. K.T. RAJENDRA, AGED ABOUT 54, W/O. M. ARJUN, THOTTINGAL, YAKKARA AMSOM, PALAKKAD. **(*DIED)**

6. K.T. VASANTHAKUMARY, W/O. R. PRABHAKARAN, AGED ABOUT 51 YEARS, PUTHICHI VEETTIL, AYILOOR, CHITTUR TALUK, PALAKKAD.

7. K.T. GIRIJA, AGED ABOUT 47 YEARS, W/O. P.R. KALADHARAN, PULUVAKULAM, PALLATHERI, CHITTUR.

8. APPUKUTTAN, AGED ABOUT 60 YEARS, S/O. NAGAMANI MASTER, KARUVAJJAD KALATHIL, KAMBRATHCHALA, MUTHALAMADA, CHITTUR TALUK, PALAKKAD DISTRICT.

***ADDL.R.9** T.M. ARJUNAN, SWATHI NIVAS, THOTTINGAL, PALAKKAD.

***ADDL R.10** T.A. MURALI, SWATHI NIVAS, THOTTINGAL, PALAKKAD.

(*ADDL. RESPONDENTS NOS. 9 AND 10 ARE IMPLEADED AS THE LEGAL HEIRS OF THE DECEASED RESPONDENT NO. 5 AS PER ORDER DATED 05.03.2003 IN C.M.P. 4226 OF 2001).

R1 BY ADV. SRI.P.N. KRISHNANKUTTY ACHAN(SR.)
BY ADV. SHRI K.T. VIJAYAN
R2 BY ADV. SHRI T. SETHUMADHAVAN.
BY ADV. SRI.K.MOHANA KANNAN
ADDL. R.9 AND R.10 BY ADV. SRI.A.K. MADHAVAN UNNI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/03/2006, ALONG WITH EFA.NO. 9 OF 1995, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 124 OF 1995 & E.F.A. No. 9 OF 1995

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Dated this the 8th March, 2006

O R D E R

This Civil Petition arises out of an order fixing quantum of mesne profits payable by the respondents. It was held by the executing court that the respondents are liable to pay a sum of Rs. 60,516.60/- as mesne profits to the Revision Petitioner . The claim for interest made by the Revision Petitioner was negatived by the executing court. Revision Petitioner challenges that part of the order by which the executing court rejected the contention of the Revision Petitioner that he is entitled to interest on mesne profits.

2. The Revision Petitioner also challenges the quantum of mesne profits fixed by the executing court and the value of paddy adopted by the court in fixing the quantum of mesne profits. The respondents in the revision paid the amount fixed by the executing court and the executing court recorded full satisfaction of the decree. The decree holder

challenges that order of the executing court in E.F.A.No. 9 of 1995.

3. The Revision Petitioner/plaintiff filed the suit for partition. A preliminary decree was passed on 05.10.1953. Final decree was passed on 08.07.1977. As per the final decree, the Revision Petitioner is entitled to get mesne profits for the period from 17.09.1951 till the date of delivery of the property at the rate of 534 paras of paddy per annum. The Revision Petitioner took delivery of the property allotted to him in October, 1977. E.P.No. 181 of 1983 was filed for realisation of mesne profits . Against the order passed by the executing court, C.R.P.No. 1947 of 1990 was filed before this court, which was disposed of on 13.11.1990 directing the executing court to determine the rate of paddy afresh for the purpose of determining the quantum of mesne profits. It was also held by this court that for realisation of mesne profits, only that much property of the judgment debtor, sufficient for realisation of decree amount be sold in court auction.

4. After the disposal of C.R.P.No. 1947 of 1990, opportunity was afforded to the parties to adduce evidence. The executing court passed the impugned order holding that the Revision Petitioner is entitled to get mesne profits at the rate of Rs. 4/- per para of paddy for the period from

1951 to 1963, at the rate of Rs. 5.20/- per para of paddy from 1964 to 1975 and at the rate of Rs. 7/- for the period 1976 to 1977.

5. The contention raised by the Revision Petitioner is that the rate adopted by the executing court for paddy is low. It was contended that the mesne profits ordered to be paid to the Revision Petitioner were not paid by the respondents in time and therefore, they are liable to pay the amounts, taking into account the value of the paddy at the time of payment. Learned counsel for the contesting respondents, on the other hand, contended that in execution of a decree for payment of mesne profits payable in kind, , viz., paddy, the decree holder is not entitled to enforce delivery of paddy in kind. The decree holder could only realise the value of paddy calculated at the prevailing rate, when the respondents became liable to deliver the paddy. She relied on the decision of the Full Bench, reported in **1954 KLT 463**- **Ouseph Ouseph & others vs. Souriyar Thomman & others.** The Full Bench considered the various decisions rendered by Travancore - Cochin High Courts and other High Courts and held that except in the case for delivery of the specific movable property, a decree for mesne profits in terms of paddy would be realised only by claiming value of paddy at the prevailing rate when the judgment debtor

was liable to deliver the paddy. The Full Bench held that:

> *"In suits for the enforcement of claims for paddy or other commodities, the decree to be passed must be in terms of the currency of the country and for that purpose, the paddy or other commodities have to be commuted into current money at the market rate prevailing on the respective dates when the commodity became payable. This rule is to govern all such cases irrespective of any consideration whether the claim is for damages arising out of tort or for damages to be ascertained for breach of contract or whether the claim is for recovery of paddy due under transaction in paddy or other commodities or whether the claim is for recovery of paddy due by way of rent, michavaram, pattom etc., payable by a tenant to his landlord. In the matter of enforcement of decree directing payment of paddy or other commodity also, the enforcement of such decree should be in terms of current money and for that purpose, the paddy or other commodity will be commuted into money at the market rate prevailing on the respective dates when the paddy or other commodity became payable."*

6. In view of the decision of the Full Bench in **Ouseph's** case (supra), the contention put forward by the revision petitioner is unsustainable. The executing court fixed the rates of paddy prevalent during the relevant periods as claimed by the Revision Petitioner. It was noticed by the court below that none of the parties chose to produce the notification issued by the Bureau of Economics and Statistics to prove the value of paddy. The rate of paddy claimed by the Revision Petitioner

having been accepted by the executing court, he is not entitled to contend that quantification of mesne profits should be made, taking into account the value of paddy at the time of passing the order by the executing court.

7. Another claim of the revision petitioner/decree holder is that he is entitled to get interest on the amounts fixed by the court. Learned counsel submitted that "mesne profits" as defined in section 2 (12)of Code of Civil Procedure includes interest on such profits. Section 2(12) defines mesne profits thus:

> *" 'Mesne profits' of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."*

The final decree passed in the case on hand does not provide for payment of interest. It is contended on behalf of the Revision Petitioner that in view of the inclusive definition of mesne profits, ("together with interest on such profits"), there need not be any separate decree enabling the decree holder to claim interest on mesne profits. The Full Bench in **Ouseph's case (**supra) answered this question in para 27 of the judgment. The Full Bench relied on the decision of the Larger Bench of the Madras High Court

in **Pankunni Menon v. Raman Menon** (**ILR 54 Madras 955)** and held that when the final decree is silent as to interest, it is not open to the executing court to fix a rate of interest and to execute the decree allowing such interest also. The Full Bench held thus:

> *"Where the decree has become final, the executing court can only execute that decree as it stands and it will be beyond the jurisdiction of that court to modify the decree by adding a provision for interest on the amount decreed by way of mesne profits. The definition of 'mesne profits' as contained in clause 12 of Section 2 of Code of Civil Procedure will not warrant the assumption of such jurisdiction by the executing court. The definition states that "Mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits. Consistent with this definition it is for the trial court while passing the final decree fixing the quantum of mesne profits, to decide on the question of interest that may be allowed on the amount of profits. Where such decree is clear and unambiguous, it will be incompetent for the executing court to modify it by making a provision for awarding future interest also. If, on the other hand, the decree is capable of sustaining a construction that the question of interest is left to the discretion of the executing court , it may be open to that court to exercise such discretion in favour of the decree holder and to allow him interest also by way of damages at the rate of 6%*".

The definition of mesne profits in Section 2(12) of Code of Civil Procedure

was the same while the Full Bench in Ouseph's case (supra) considered the aforesaid question.

8. Learned counsel for the petitioner relied on the decision reported in **Koshy** v. **Luckose** (1975 K.L.T. 443) and contended that interest form part of mesne profits and, therefore, there was no justification for the executing court to deny interest. That case arose out of final decree proceedings and it was held that interest also can be awarded on mesne profits. In the case on hand, the final decree has become final and the question is whether in execution proceedings interest can be awarded on mesne profits. Going by the Full Bench decision in 1954 KLT 463 (supra), the executing court has no such power. Learned counsel for the revision petitioner also relied on an unreported order dated 1.8.1995 in C.R.P.Nos.757 & 1257 of 1995. Reliance was placed on the following sentence:

> *"I also hold that the decree holders would be entitled to the interest at 6% per annum on the amount for respective years shown by the Commissioner in his report. Interest for the relevant years commencing from the 1st of April of the latter year."*

It is not clear from the judgment whether the final decree provided for

interest on mesne profits. Therefore, it is not proper to rely on the said order as laying down as a proposition of law that the decree holder would be entitled to claim interest on mesne profits, though it is not specifically awarded in the final decree. Reliance was also placed on the decision of the Bombay High Court in **Tarquino Raul Henriques** v. **M/s.Damodar Mangalji & Co. Pvt. Ltd. & another** (1988 (1) CCC 388). That decision also does not indicate that the court could award interest on mesne profits in execution while the final decree does not provide for interest.

Therefore I am of the view that the contentions raised by the Revision Petitioner lack merits. Accordingly C.R.P. No. 124 of 1995 is dismissed. Since the judgment debtors have deposited the amount as ordered by the executing court, the court was fully justified in recording full satisfaction of the decree. Therefore E.F.A.No. 9 of 1995 also fails. Revision Petition as well as E.F.A. are dismissed without any order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 124 OF 1995
&
E.F.A.No. 9 OF 1995

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Dated this the 8th March, 2006

O R D E R